



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: SGA - 203639

PRELIMINARY RECITALS

Pursuant to a petition filed on November 5, 2021, under Wis. Stat. Sec. 48.623(5), to review a decision by the Department of Children and Families denying subsidized guardianship payments, a hearing was held on January 6, 2022, by telephone.

The issue for determination is whether the department erred in its denial of petitioner's request for subsidized guardianship payments under Wis. Stat. Sec. 48.623.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 West Washington Avenue
Madison, WI 53703

By: [REDACTED]
Department of Children and Families-OLC

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County. She is the parent of four adult children.
2. [REDACTED] was petitioner's aunt.
3. [REDACTED] was guardian to her minor grandchild K.B-P.
4. [REDACTED] guardianship was subsidized pursuant to Wis. Stat. Sec. 48.623 and pursuant to the Subsidized Guardianship Agreement ("Agreement") executed on 10/12/17. The Agreement named [REDACTED] as the prospective successor guardian.
5. [REDACTED] was diagnosed with bone cancer in February 2021.
6. [REDACTED] asked petitioner to step in to care for K.B-P. after her death.
7. Petitioner agreed to take in her cousin and become guardian after [REDACTED] death. Petitioner was unaware that there was a subsidized guardianship agreement or that [REDACTED] received subsidies from the state as part of such agreement.
8. No changes were made to the subsidized guardianship agreement to reflect petitioner as the new prospective successor guardian.
9. Petitioner petitioned the circuit court *pro se* in Milwaukee County case 16JC227 to be named successor guardian under Wis. Stat. Sec. 48.9795.
10. On 8/5/21 the circuit court issued an order naming petitioner successor guardian under Wis. Stat. Sec 48.977.
11. [REDACTED] died in August 2021.
12. Petitioner later learned that [REDACTED] was guardian under a subsidized guardianship and was receiving subsidies from the State of Wisconsin as guardian.
13. Petitioner sought the same subsidies from the department.
14. The department denied the request by notice dated October 19, 2021.

DISCUSSION

Guardians can receive subsidies under certain conditions. Wis. Stat. § 48.623. In this case, the petitioner was named successor-guardian in the circuit court. Petitioner later learned that the prior guardian, her aunt, was receiving subsidies. Petitioner requested to receive the same subsidies. The department denied this. Petitioner wishes to receive the subsidy payments from the department under the successor-guardian provision of the subsidized guardianship statute:

(bm) On the death or incapacity of a guardian receiving payments under sub. (1), the county department or the department providing those payments shall provide monthly subsidized guardianship payments in the amount specified in sub. (3) (b) to a person named as a prospective successor guardian of the child in a subsidized guardianship agreement or amended subsidized guardianship agreement that was entered into before the death or incapacity of the guardian if all of the following conditions are met and the court appoints the person as successor guardian to assume the duty and authority of guardianship as provided in s. 48.977 (5m):

- 1. The county department or department determines that the child, if 14 years of age or over, has been consulted with regarding the successor guardianship arrangement.*

2. The county department or department determines that the person has a strong commitment to caring permanently for the child.

3. The county department or department inspects the home of the person, interviews the person, and determines that placement of the child with the person is in the best interests of the child. In the case of an Indian child, the best interests of the Indian child shall be determined in accordance with s. 48.01 (2).

4. Prior to being appointed as successor guardian to assume the duty and authority of guardianship, the person enters into a subsidized guardianship agreement under sub. (2) with the county department or department.

5. Prior to the person entering into the subsidized guardianship agreement, the county department or department conducts a background investigation under s. 48.685 of the person and any nonclient resident, as defined in s. 48.685 (1) (bm), of the home of the person and determines that those individuals meet the requirements specified in s. 48.685. The county department or department shall provide the department of health services with information about each person who is denied monthly subsidized guardianship payments or permission to reside in the home of a person receiving those payments for a reason specified in s. 48.685 (4m) (a) 1. to 5. or (b) 1. to 5.

Wis. Stat. Sec. 48.623(6)(bm) (boldface added for emphasis).

It is undisputed that petitioner was not the person named as prospective successor guardian in the Agreement. Thus, there is no automatic process to have petitioner become the successor guardian. I am in agreement with the department that petitioner would have had to initiate a new subsidized guardianship process to become guardian under a subsidized guardianship agreement and receive subsidies. [REDACTED] was the person named in the Agreement and would be the person that could trigger the above provisions.

At this point, petitioner cannot simply become guardian in a subsidized guardianship as she is already the guardian of the minor. The statute does not allow a current guardian to become a successor guardian in a subsidized guardianship. See Wis. Stat. Sec. 48.623(1)(b)5 (“Prior to being named as the guardian of the child, the guardian entered into a subsidized guardianship agreement under sub. (2) with the county department or department.”). The department was correct in its denial of subsidy payments.

That the department did not err does not mean that this is the right or just result. It may be that what petitioner seeks could have been accomplished by the circuit court when the initial petition was heard on her petitioner to become successor guardian. It may be that petitioner meets or could meet all the requirements under the statute to become a subsidized guardian. And, it may be that petitioner is exactly the type of person, and that the minor is exactly the type of child, that the statute is intended to encompass. It is regretful that petitioner was unrepresented in the circuit court and that neither the GAL, nor the corporation counsel, nor the judge had an inkling that [REDACTED] [REDACTED] had a subsidized guardianship. It is similarly regretful that [REDACTED] did not discuss the Agreement with petitioner prior to her death. I can envision a creative solution that might have resulted in the relief petitioner seeks had these facts been different.

I have limited authority to determine whether a state’s adverse action is correct or incorrect. On this record, I cannot find that the department has erred in any way. There may be no specific provision in the

guardianship statute that allows for what petitioner is seeking. But, what she is seeking seems reasonable and right. Petitioner's motives here are nothing but admirable and I don't know that any of the players in this drama up to this point would actually advocate against the remedy she seeks. I, however, have no authority to effect such result.

It may be in petitioner's interests to seek advice of legal counsel with some knowledge of subsidized guardianships. While possibly a challenge to find, there may be attorneys who could provide some guidance to petitioner at no cost or at reduced cost.

CONCLUSIONS OF LAW

The department did not err in its denial of guardianship subsidy payments.

THEREFORE, it is **ORDERED**

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

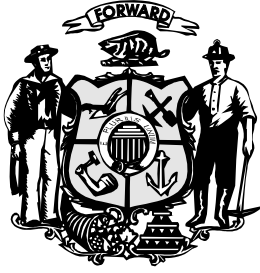
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 West Washington Avenue, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 11th day of February, 2022



John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 11, 2022.

Adoption Assistance

Attorney [REDACTED]